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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/605,973 | 11/11/2003 | Leonid Petrenko | LP02 | 2972 |
| 27797 | 7590 | 02/16/2005 | EXAMINER | |
| RICHARD D. FUERLE 1711 W. RIVER RD. GRAND ISLAND, NY 14072 | | | REIS, TRAVIS M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2859 | |

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 10/605,973 | | PETRENKO, LEONID | |
| | Examiner | | Art Unit | |
| | Travis M. Reis | | 2859 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-6, 14-17, & 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris (U.S. Patent 5590545).

Norris discloses a device comprising a plate made of plastic (col. 4 lines 55-57) that has a middle section (17) between two larger end sections (19, 21), where said plate is symmetrical about a first axis that passes through said middle section and said end sections and is symmetrical about a second axis at 90⁰ to said first axis that passes through the center of said middle section (Figure 3), with notches (49, 51) extending in a line from the periphery of the edge inwardly towards the center (Figure 3).

Norris does not disclose said plate is flat or the edge is shaped in a circle. However, the shape of the plate, i.e., completely flat and circle-shaped, absent any criticality, are only considered to be obvious modifications of the shape of the plate disclosed by Norris as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find obvious to provide using routine experimentation based on its suitability for the intended use of the invention.

See *In re Dailey*, 149 USPQ 47 (CCPA 1976). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the plate disclosed by Norris completely flat and in the shape of a circle in order to be more easily

handled.

With respect to the preamble of the claims 1-6, 14-17, & 19: the preamble of the claim does not provide enough patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

With reference to claims 6, 17, & 19, Norris does not disclose the metal is rust proof. However, the particular type of material used to make the plate, absent any criticality, is only considered to be the use of a “ preferred ” or “ optimum ” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of Applicant’s apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See In re Leshin, 125 USPQ 416 (CCPA 1960). Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to use rust proof metal for the plate disclosed by Norris in order to protect the plate in case the plate gets wet.

3. Claims 7-13, 18, & 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Norris in view of Bowers (U.S. Patent 5096022).

With reference to claims 7-11, 18, & 20, Norris discloses all of the instant claimed invention as stated above in the rejection of claims 1-5 & 14-16, including two plates (Figure 1); & a loop of material passing over the middle section of said plate (Figure 2).

Norris does not disclose a flag display and method comprising a flag having two

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eyelets each with an aperture therethrough and a halyard, a loop of which passes through said aperture and over the plate over each aperture.

Bower discloses a theft –proof flag locking system with a flag (100) having two eyelets (101, 102) each with an aperture therethrough (X,Y, see below)



and a halyard (90), a loop of which (91, 92) through each of said apertures (Figure 1).

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to add the flag & halyard disclosed by Bower to the plates disclosed by Norris in order to widen the range of cloth articles (i.e. a garment or a flag) retained by the plates.

With reference to claim 12, Norris & Bowers disclose all of the instant claimed invention as stated above in the rejection of claims 1-5 & 14-16, including the device may be made of metal (col. 4 lines 55-57).

Norris & Bowers do not disclose the metal is rust proof. However, the particular type of material used to make the plate, absent any criticality, is only considered to be the use of a “preferred” or “optimum” material out of a plurality of well known materials that a person having ordinary skill in the art at the time the invention was made would have find obvious to provide using routine experimentation based, among other things, on the intended use of Applicant’s apparatus, i.e., suitability for the intended use of Applicant’s apparatus, and since the courts have stated that a selection of a material on the basis of suitability for intended use of an apparatus would be entirely obvious. See In re Leshin, 125 USPQ 416 (CCPA 1960).

Therefore, it would have been obvious to one with ordinary skill in the art at the time of the

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invention was made to use rust proof metal for the plate disclosed by Norris & Bowers in order to protect the plate in case the plate gets wet.

With reference to claim 13, Norris & Bowers do not disclose said apertures are about 3/8 to about 1 inch in diameter and the end portions of said plate are 1/8 to 1/4 inches larger. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide apertures having a diameter in the range of about 3/8 to about 1 inch; and the end portions 1/8 to 1/4 inches larger since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the "optimum range" involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Therefore, it would have been obvious to one with ordinary skill in the art at the time of the invention was made to make the apertures have a diameter in the range of about 3/8 to about 1 inch; and the end portions 1/8 to 1/4 inches larger in order to an easily handled size.

Response to Arguments

4. Applicant's arguments with respect to a flat plat in claim 1 have been considered but are moot in view of the new ground(s) of rejection.

5. In response to applicant's arguments that Applicant has no grip means as disclosed in Norris; these arguments have been fully considered but they are not persuasive since the presence of additional features cited by the prior art do not prevent the proper application of said prior art to the limitations of Applicant's claims.

6. In response to applicant's argument that Norris is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Norris is in the field of

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material strip (i.e straps, halyards, lines) retention.

7. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., how the flag is attached to the halyard, attaching a single strap or halyard to a garment or a flag) are not recited in the rejected claim(s). The limitations of the claims are directed with the display of a flag from a halyard. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

8. Applicant's arguments with respect to claims 7-13, 18, & 20 (i.e. four grips bent away) have been considered but are moot in view of the new ground(s) of rejection.

9. In response to applicant's arguments that Bower does not push a loop of a halyard through an eyelet in a flag, nor does Norris; these arguments have been fully considered but they are not persuasive since Bower does push a loop through an aperture of the eyelet, as detailed above in paragraph 3, and thus such a teaching is not necessary in Norris.

10. In response to applicant's argument that Norris and Bower are nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, both Norris and Bower are in the field of material strip (i.e straps, halyards, lines) retention.

Conclusion

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

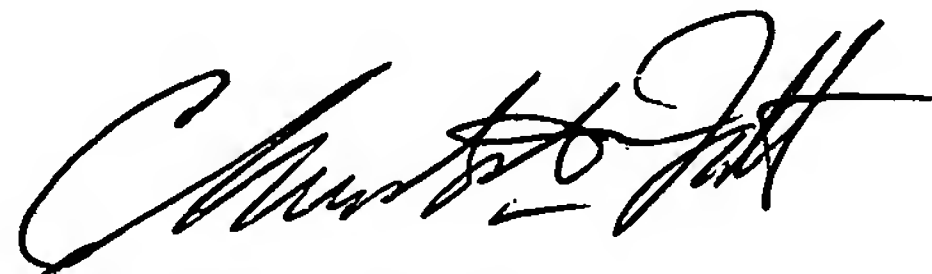
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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Travis M. Reis whose telephone number is (571) 272-2249. The examiner can normally be reached on 8--5 M--F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for all communications.

Travis M Reis
Examiner
Art Unit 2859



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800

tmr
February 10, 2005

CHRISTOPHER W. FULTON
PRIMARY EXAMINER